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Board of Supervisors



**RESOLUTION NO. 15-05-02**

BEFORE THE BOARD OF SUPERVISORS

GILA COUNTY, STATE OF ARIZONA

In the Matter of: )  
 )  
Application of BONITA CREEK LAND )  
 ) **F R A N C H I S E**  
AND HOMEOWNERS' ASSOCIATION )  
 )  
for the renewal of a water franchise. )  
\_\_\_\_\_ )

***BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF GILA COUNTY, STATE OF ARIZONA, THAT:***

***WHEREAS***, Bonita Creek Land and Homeowners' Association ("Franchisee") on April 7, 2015, presented to the Gila County Board of Supervisors an application petitioning that the Board grant the renewal of a non-exclusive, non-public water Franchise to provide domestic and residential water to its member homes pursuant to A.R.S. §40-283 to enter upon all present and future public highways, roads, streets, alleys, thoroughfares (except state highways and except within the present confines of any incorporated city or town) within the unincorporated area of Gila County known as Bonita Creek, Payson, Arizona, to construct, operate and maintain water system facilities along, over, under and across said public highways, roads, streets, alleys and thoroughfares for the provision of water utility service; and,

***WHEREAS***, on February 3, 1992, the Board of Supervisors adopted Resolution No. 92-2-1 consenting to the transfer of the Franchise from the Rancho Bonita Water Company to the Bonita Creek Land and Homeowners' Association; and,

**WHEREAS**, the Bonita Creek Land and Homeowners' Association has been operating the Bonita Creek Water Company and providing water to the Bonita Creek community since 1991; and

**WHEREAS**, the Franchise Service Area is legally described as follows: South Half (S½) of the Southeast Quarter (SE¼) and the Northeast Quarter (NE¼) of the Southeast Quarter (SE¼) of Section 31, Township 12 North, Range 11 East, and the Northwest Quarter (NW¼) of the Southwest Quarter (SW¼) of Section 32, Township 12 North, Range 11 East, G&SRB&M, Gila County, Arizona; and,

**WHEREAS**, upon filing of said application, the Board of Supervisors ordered the public notice of the intention of the Board to make such a grant by publication in the official County newspaper for 2015, the *Arizona Silver Belt*, once a week, three times consecutively on April 15, 2015, April 22, 2015, and April 29, 2015, and by publication in the *Payson Roundup* on April 21, 2015, and noticing that on Tuesday, May 5, 2015, the Gila County Board of Supervisors would consider the application at the Courthouse at 1400 E. Ash Street in Globe and at 610 E. Highway 260 in Payson simultaneously by ITV; and,

**WHEREAS**, the Arizona Silver Belt and the Payson Roundup newspapers have provided the Gila County Board of Supervisors with an affidavit that the notice had been published in the newspapers; and,

**WHEREAS**, notice was also regularly given pursuant to A.R.S. §38-431; and,

**WHEREAS**, this matter appeared before the Gila County Board of Supervisors on May 5, 2015, and no one appeared in opposition thereto; and,

**WHEREAS**, it appears that it will benefit the public safety, health or welfare in renewing this Franchise for an additional 15 years effective from the date of Board of Supervisors' approval, and that the Franchisee has complied with all necessary laws to enable it to receive such a Franchise;

**NOW, THEREFORE, IT IS RESOLVED** that the renewal of this Franchise be granted to Bonita Creek Land and Homeowners' Association for the purpose of entering all present and future public highways, roads, streets, alleys, thoroughfares (except state highways and except within the present confines of any incorporated city or town) through May 4, 2030, unless earlier terminated, to construct, operate and maintain water service facilities within the unincorporated areas of Gila County, specifically providing, however, that:

1. All rights hereunder are granted under the express condition that the Board of Supervisors of Gila County shall have the power at any time to impose such restrictions and limitations and to make such regulations on such highways, roads, streets, alleys and thoroughfares as may be deemed best for the public safety, welfare and convenience.
2. All rights hereunder are granted on the express condition that the Franchisee shall bear all expenses, including damage and compensation, for any alteration of the direction, surface

grade or alignment of a county road or any other such highway, road, street, alley, or thoroughfare occasioned by the exercise of its Franchise rights. If such road improvements are necessary and the Franchisee fails to make such improvements or bear all expenses necessary within 45 days after notification by Gila County, this grant shall be immediately rescinded and without any force or effect. Franchisee shall erect and maintain all necessary safety precautions throughout the period of the improvements.

3. All rights hereby granted shall be exercised so as not to interfere or conflict with any easement or right-of-way heretofore granted by said Board of Supervisors. Before Franchisee enters upon any highway, road, street, alley or thoroughfare that requires a right-of-way permit from the Gila County Public Works Division pursuant to Gila County Right-of-Way Ordinance No. 02-01, Franchisee shall apply for and receive such a permit.

4. All water system facilities constructed, operated and maintained pursuant to this Franchise shall be placed, removed or relocated, initially and throughout the term of this Franchise, along, in, or, under, over and across the said highways, roads and thoroughfares in such manner and location as the Board of Supervisors or its duly authorized agents may approve. Such placement, removal or relocation shall be done at the sole expense of the Franchisee upon a determination by the Board of Supervisors of Gila County that such facilities interfere unduly with vehicular traffic over any such highway, road, street, alley, or thoroughfare. In all other instances, the costs incurred in relocating such facilities shall be borne by and added to the costs of the public or private improvement causing or resulting in such relocation.

5. Franchisee shall indemnify, defend, and save harmless Gila County from all costs, expenses and liabilities in connection with the grant of this Franchise and exercise of the same by Franchisee.

6. The Franchise granted herein shall not be deemed exclusive and the Board of Supervisors expressly reserves the right to grant from time to time similar Franchises over the same territory, highways, roads, streets, alleys and thoroughfares.

7. The right, privilege and Franchise granted herein shall be binding upon and inure to the benefit of Franchisee, its successors and assigns; provided, however, that no transfer or assignment shall be made without prior written notice to the Board of Supervisors.

8. In the event Gila County takes action to dispose of unnecessary public roadways in accordance with the provisions of Arizona Revised Statutes 28-7201, et seq., Gila County shall recognize and preserve each of Franchisee's prior rights-of-way, easements, and rights under this Franchise which are affected thereby, as they existed prior to such disposition.

9. This Franchise is granted upon the express condition that a current Certificate of Convenience and Necessity issued by the Arizona Corporation Commission in the name of Bonita Creek Land and Homeowners' Association is presented to the Board of Supervisors of Gila County within six (6) months of the date of this Franchise; and if such Certificate is not submitted to the Board of Supervisors within the required time frame; this Franchise shall be null and void.

**IN WITNESS THEREOF**, the Board of Supervisors of Gila County, State of Arizona, by its Chairman, has hereunto set her hand and caused its official seal to be affixed this 5<sup>th</sup> day of May 2015.

\_\_\_\_\_  
Michael A. Pastor, Chairman  
Gila County Board of Supervisors

*Approved as to form:*

*Attest:*

\_\_\_\_\_  
Bryan Chambers  
Deputy County Attorney/Civil Bureau Chief

\_\_\_\_\_  
Marian Sheppard,  
Clerk of the Board

The foregoing terms and conditions are hereby accepted by the Franchisee.

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_